

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
)	
CYNTHIA RUNDLES,)	CASE NO. 07-63558
)	
Debtor.)	JUDGE RUSS KENDIG
)	
)	
)	MEMORANDUM OF OPINION
)	(NOT INTENDED FOR
)	PUBLICATION)

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on November 21, 2007.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2007 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/07poverty.shtml>, the poverty income for a family of one is \$10,210.00. At 150 percent of poverty, the poverty income for this family is \$15,315.00 annually, or \$1,276.25 per month.

Form B22A (the "means test") indicates Debtor's Annualized Current Monthly Income is \$15,853.80 which is based on a gross monthly income of \$1,321.15 from Debtor's employment. The average gross earnings of her last four pay stubs is \$609.25. Since Debtor is paid biweekly, her monthly gross earnings are approximately \$1,320.00, which comports with the B22A. On gross earnings, these figures demonstrate that Debtor earns slightly more than 150% of the poverty line. The Judicial Conference guidelines advise that the appropriate point of review for *in forma pauperis* motions is Line 16 of Schedule I. This figure reflects net earnings, not gross. According to Schedule I, Line 16, Debtor earns \$1,044.51 per month, clearly below 150% of the poverty level. This amount is reflected in her recent pay stubs, which demonstrate average net monthly earnings of \$1,011.81. Thus, the court finds that, under the guidelines promulgated by the Judicial Conference, the debtor satisfied the first prong of the test.

Next, the court must determine if Debtor has the ability to pay the filing fee in installments. Upon review of Debtor's Schedule J, the court concludes that Debtor is not able to pay the filing fee in installments. Debtor's budget shows a monthly shortfall of \$625.89. There is no room in the budget to make up the shortfall, let alone add an installment payment. Thus, the court finds that the Debtor does not have the ability to pay the filing fee in installments and she has satisfied the second prong of the test.

In light of the above, the Court hereby **GRANTS** Debtor's application to waive the filing fee.

An order in accordance with this decision shall be issued immediately.

DEC 04 2007

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

Service List:

Wayne W Sarna
Community Legal Aid Services, Inc.
First National Tower, 7th Floor
Youngstown, OH 44503

Cynthia Rundles
714 Pittsburgh Avenue
Wooster, OH 44691

Anne Piero Silagy
220 Market Ave., S., #300
Canton, OH 44702